

INSTRUCTIONS FOR STRIP LIEN MOTIONS

1. File a motion, which should include allegations of the facts set forth in the proposed Order and Notice below,¹ specifically:

- ☐ Identify Debtor's (or Debtors') real property by its street address, including county and ZIP code (the "Property")
- ☐ Set forth the fair market value of the Property and the basis for that valuation
- ☐ Attach to the motion a copy of the appraisal report as Exhibit A
- ☐ Identify the First Lender by name, the amount of its outstanding claim and whether it has filed a proof of claim (Claim No. ____)
- ☐ Identify the Junior Lender by name, the amount of its outstanding claim and whether it has filed a proof of claim (Claim No. ____)

2. Prepare and submit the proposed Order and Notice in the form and format set forth below, with Exhibit A attached.

3. Upon entry of the Order and Notice, serve it upon Debtor (or Debtors), the Junior Lender and the Chapter 13 Trustee, and perhaps the First Lender. The First Lender and Junior Lender should be served in accordance with Bankruptcy Rule 7004 and at the address for notices on any filed proof of claim, as well as upon any attorney who has appeared in the case for the creditor by signing the proof of claim or otherwise (see Judge Massey's monograph at his website).

4. After the Order and Notice is served and the objection time expires:

- ☐ If an objection is filed, a hearing will be scheduled;
- ☐ If no objection is filed, if the Order and Notice was properly served, Debtor's (or Debtors') attorney should send a proposed eOrder granting the motion. That proposed order should be in exactly the form of the order attached as Exhibit A to the Order and Notice.

¹ a/k/a a "New York Notice" giving advance notice of the order proposed for entry.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
ANN B. DEBTOR,)	CASE NO. _____ - MHM
)	
Debtor.)	

)	
ANN B. DEBTOR,)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
SECOND BANK,)	
)	
Respondent.)	

ORDER AND NOTICE REGARDING STRIP LIEN MOTION

On [date], Debtor filed a motion to strip the junior lien held by [name] (the "Motion"). In the Motion, Debtor alleges:

- Debtor's real property and residence is [identify the real property] (the "Property").
- The fair market value of the Property is [\$_____] based upon an appraisal performed by [identify appraiser], whose report is attached to the Motion.
- [Identify first lienholder by name] ("First Lender") holds a first priority lien in the amount of [\$_____]. First Lender has (or has not) filed a proof of claim (Claim No. ____).

- [Identify by name the junior lienholder] (“Junior Lender”) holds a second priority lien in the amount of [\$_____], and has (or has not) filed a proof of claim (Claim No. ____).
- Debtor alleges the Junior Lender’s lien is wholly unsecured.

The Motion is available for review in the office of the Clerk, U.S. Bankruptcy Court between 8:00 a.m. and 4:00 p.m. or online anytime at ***http://ecf.ganb.uscourts.gov*** (registered users) or at ***http://pacer.psc.uscourts.gov*** (unregistered users). It is hereby

ORDERED that any person or party who objects to entry of an order granting the relief sought in the Motion:

1. **Must file** a written objection, stating the grounds therefor, on or before the close of business² _____, 20____, with

Clerk, U. S. Bankruptcy Court
1340 U. S. Courthouse
75 Spring Street, S.W.
Atlanta, Georgia 30303-3367;

2. **Must serve** a copy of said objection upon Debtor’s attorney:

[identity and address of Debtor’s Atty

_____]

so that such written objections are actually received by Debtor’s attorney on or before the deadline set forth in Paragraph 1; and

3. **Must advocate** the objection at the hearing on the Motion.

² Objections filed electronically may be filed up to 11:59:59 p.m. All other objections must be filed by delivery to the Clerk's Office at or before 4:00 p.m.

If objections are filed, hearing on the Motion will be held before the undersigned in Courtroom 1204, United States Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303, on _____, 20____, at _____ o'clock __.m.

Any objection not timely filed, served, and advocated at the hearing set above shall be deemed waived, and the proposed order attached to this order as Exhibit A may be entered without further notice or hearing. It is further

ORDERED that, on or before _____, 20____, Debtor's attorney shall serve a copy of this Order and Notice upon Debtor, Debtor's attorney, the First Lender, the Junior Lender, and the Chapter 13 Trustee, and shall file a certificate of such service within three days thereafter.

IT IS SO ORDERED, this the _____ day of _____, 20__.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 13
)	
ANN B. DEBTOR,)	CASE NO. _____ - MHM
)	
Debtor.)	

)	
ANN B. DEBTOR,)	
)	
Movant,)	
v.)	CONTESTED MATTER
)	
SECOND BANK,)	
)	
Respondent.)	

ORDER ALLOWING JUNIOR LIEN AS UNSECURED CLAIM

An Order and Notice regarding Debtor’s motion filed _____ to strip the
lien held by [junior lienholder] (“_____”) (Claim No. _____) was provided [date]

(Doc. No. ____) (“Notice”). Debtor’s attorney contends that _____’s claim is completely unsecured because no value exists in the Property of Debtor to which its junior lien can attach. Therefore, _____’s claim is unsecured and its lien may be deemed *void* upon entry of Debtor’s discharge pursuant to 11 U.S.C. Sections 506(d) and 1322(b)(2). *See In Re Tanner*, 217 F. 3d 1357 (11th Cir. 2000). Debtor and the record show that the holder of the first priority lien, [identify the first lienholder by name], claims a secured debt in the amount of \$_____, which amount exceeds the value of the Property, \$ _____. Therefore, it is appropriate to value the lien of _____ at zero for purposes of confirmation of Debtors’ Chapter 13 plan and classify and treat its claim as a general unsecured claim. Pursuant to §1325(a)(5)(B)(i)(I)(aa) and (bb), however, the lien cannot be held to be unenforceable and void until Debtor receives her §1328 discharge. *See In re Fenn*, 428 B.R. 494 (Bankr. N.D. Ill. 2010), *In Re Gerardin*, 2011 WL 672050 (Bankr. S.D. FL Feb. 17, 2011). Respondent failed to oppose the Motion in writing, so that, pursuant to the Notice, its lack of opposition and for good cause shown, it is hereby

ORDERED that the claim of _____ is *disallowed* as secured, *allowed* as unsecured, and shall be treated accordingly under Debtors’ Plan. Upon entry of the Chapter 13 discharge, Debtor may seek by motion in this case an order avoiding the _____ lien. It is further

ORDERED that, should this chapter 13 case be dismissed or converted to chapter 7, the lien of _____ shall not be affected by this Order.

[END OF DOCUMENT]

Exhibit A